

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>QUESTAR ACADEMY,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PROPERTY TAX ADMINISTRATOR.</b></p>	<p><b>Docket No.: 55540</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 29, 2011, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by Shawn L. McIntire, Esq. Respondent was represented by Robert H. Dodd, Esq. Petitioner is protesting Respondent's denial of property tax exemption for tax years 2007, 2008, 2009, and 2010 for the subject property.

Petitioner did not file the required initial application for exemption until 2009. Respondent cited Section 39-2-117(1)(a)(I), C.R.S., which states:

The exemption is to be effective upon such date as the Administrator shall determine, but in no event shall such exemption apply to any year prior to the year preceding the year in which application is made.

Respondent contends that exempt status could only be granted for the year in which the initial application was filed and one year before. Therefore, Respondent contends that the subject property is not eligible for exemption for tax year 2007. During the hearing, Petitioner concurred with these facts and agreed to drop tax year 2007 from this petition.

Subject property is described as follows:

**1008 Depot Hill Road, Broomfield, Colorado  
Broomfield County Parcel No. 157527408006**

The subject property is a two-story commercial building located on a 0.50-acre site owned by Questar Academy (QA). The building interior consists largely of classroom space. The building is

occupied by Front Range Academy (FRA), a not-for-profit corporation which operates an alternative school for grades 6 through 12 for students identified as at-risk of failing or dropping out. FRA has partnered with Hope Online Academy (Hope Online), an accredited charter school, for the education program offered at the school and receives state funding because of the Hope Online association. FRA has a 12-month school year and requires daily attendance.

Petitioner does not dispute the actual value assigned to the property, but contends that the property owner is entitled to a real property tax exemption for tax years 2008 through 2010 because QA and the occupant, FRA, are related entities and because the property is used for a state funded school. Although QA is the legal owner of the property, FRA pays the mortgage and all other expenses associated with the property, but does not pay money directly to QA. Petitioner contends that it did not seek legal advice when various documents pertaining to QA and FRA were prepared, so mistakes were made, but the use as a state funded school should not be penalized by those mistakes.

Respondent contends that Petitioner and FRA are two different entities. The property owner, not the occupant must qualify for tax exemption, though the use of the property is also a consideration, and Petitioner did not provide the requested organizational documents to support its qualification for exemption. Respondent contends that Petitioner has thus not met the burden of proof requirement of Rule 1.B.1 of the Division of Property Taxation Rules and Regulations For Exempt Properties.

Petitioner presented witness testimony of Mr. Gerald L. Dare, the founder and registered agent for QA and FRA, regarding the history and relationship of both organizations. The witness testified that QA is a not-for profit corporation that had previously operated a tuition-based school. As a tuition-based school, QA could not partner with Hope Online, so the FRA organization was created for that purpose. The witness testified that QA and FRA are both registered with the Secretary of State and presented Articles of Incorporation for both entities. According to the witness, the two organizations have the same board members, but operate separately and are not connected financially. QA leased the subject property prior to its purchase in 2007. However, FRA has been the sole occupant of the subject since 2005. The witness testified that although QA holds title to the subject, FRA pays all of the operating expenses and the mortgage for the property in lieu of a lease. Mr. Dare presented a Promissory Note encumbering the subject property showing Questar Academy and Learning Center as the borrower, but specifying that all note payments will be made by FRA. Mr. Dare testified that because he is the registered agent for both QA and FRA, he believes that his signature on behalf of either entity counts as representative for both entities on the documents presented. According to Mr. Dare, financial documents for QA were not provided to Respondent because QA and FRA are not involved financially, so the QA financial statements are not important to this case.

Ms. Karen Dvorak, a property tax specialist handling exemptions with the PTA, testified for Respondent. Ms. Dvorak testified that Petitioner filed the tax exemption application as QA and Respondent verified that title to the property is held by QA. Ms. Dvorak testified that Respondent made multiple requests to Petitioner for information required to determine if QA qualifies for tax exemption, but the information was not provided. Respondent attempted to find supporting

information for QA through the Secretary of State's office, but found only a filing for Questar Academy and Learning Center (QALC) and the information available from that source was too limited to make a determination. Ms. Dvorak testified that Respondent has attempted to obtain supporting documentation to determine if QA and QALC are the same organization, but Petitioner has failed to provide it. Petitioner has provided different Articles of Incorporation for QA and QALC, though only QALC is registered with the Secretary of State. Title to the subject property is held by QA, not QALC, but the Promissory Note encumbering the property shows QALC as the borrower. Confusion about these two names persists and Respondent concluded that QA and QALC appear to be separate entities. Despite the name confusion, Ms. Dvorak testified that it remains unclear if either QA or QALC as the property owner could qualify for tax exemption as a charitable organization. Being registered as a not-for-profit organization is not the same as being a charitable organization.

Ms. Dvorak testified that exempt status is granted to the property owner and does not run with the land. The owner and the specific use of the property must be qualified by Respondent before exemption is granted. Ms. Dvorak testified that the evidence and testimony presented by Petitioner demonstrates that FRA, the building occupant, not the owner, is responsible for the mortgage payments and all of the operating expenses for the property. Payment of the mortgage by the building occupant rather than the owner disqualifies Petitioner from tax exempt status pursuant to Section 39-3-116(2), C.R.S. which states the following:

- (a) The use of the property by the owner, if any, must qualify pursuant to the provisions of this section or pursuant to any of the provisions of sections 39-3-106 to 39-3-113, and, in addition, the owner must qualify for an exemption pursuant to the provisions of section 39-2-117;
- (b) The use of the property by the person or organization other than the owner is a use described in the provisions of this section or in any of the provisions of sections 39-3-106 to 39-3-113 or such person or organization is otherwise exempt from the payment of property taxes; and
- (c) The amount received by the owner for the use of such property specified in sections 39-3-107 to 39-3-113, other than from any shareholder or member of the owner or from any person or organization controlled by an organization which also controls such shareholder or member, shall not exceed one dollar per year plus an equitable portion of the reasonable expenses incurred in the operation and maintenance of the property so used. For purposes of this paragraph (c), reasonable expenses shall include interest expenses but shall not include depreciation or any amount expended to reduce debt.

Respondent contends that the subject property is not entitled to a real property tax exemption for tax years 2008, 2009, and 2010 because Petitioner, as the property owner, did not provide the requested organizational documents to meet its burden to prove its qualification as a charitable organization for exemption. Also, the amount received by Petitioner from FRA, the building

occupant, exceeds the statutory limit of one dollar per year plus an equitable portion of the reasonable expenses for the property.

Petitioner did not present sufficient probative evidence and testimony to prove that the property owner meets the qualifications for real property tax exemption for tax years 2008, 2009, and 2010. The Board has relied on Section 39-2-117(1)(b)(I), C.R.S which states: "Any users of real and personal property for which exemption from general taxation is requested pursuant to any of the provisions of sections 39-3-107 to 39-3-113 may be required to provide such information as the property tax administrator determines to be necessary."

The Board finds that QA/QALC and FRA were created as separate entities for separate purposes, a tuition based school, and a state supported school. The Board finds that QA and QALC might be the same organization, but Petitioner has been inconsistent with the use of the names which has created confusion. The Board finds that although QALC is shown as the borrower on the loan agreement encumbering the property and FRA is shown in the agreement as the party that will make the mortgage payments, the value and any equity associated with the property is vested in QALC. The inclusion of both parties in the loan agreement does not prove that FRA is essentially the property owner. Petitioner's witness testified that both organizations have the same three board members, but the Articles of Incorporation do not require that the board members must remain the same. Petitioner's witness further testified that although QA/QALC and FRA have common board members, the organizations are independent entities. Therefore, the Board concludes that QA/QALC and FRA must be viewed as separate entities relative to qualification for property tax exemption. On that basis, the monetary value received by Petitioner from FRA in the form of mortgage payments made to the mortgagor exceeds the statutory limit of one dollar per year plus an equitable portion of the reasonable expenses for the property. The fact that Petitioner did not seek legal counsel at the time the various documents forming the different legal entities were created, or when the property ownership and loan agreement documents were created does not relieve Petitioner's responsibility to prove that both the owner and the use qualify for exemption. The Board concludes that Petitioner did not provide sufficient information requested by Respondent to prove that Petitioner qualified for real property exemption, and so has failed to meet its burden.

**ORDER:**

The petition is denied.

**APPEAL:**

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review thereof according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it is a matter of statewide concern, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

Section 39-2-117(6), C.R.S.

**DATED and MAILED** this 28th day of October, 2011.



**BOARD OF ASSESSMENT APPEALS:**

A handwritten signature in cursive script, appearing to read "Diane M. DeVries".

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Diane M. DeVries

A handwritten signature in cursive script, appearing to read "Louesa Maricle".

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Louesa Maricle

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

A large, stylized handwritten signature in cursive script, appearing to read "Milla Crichton".

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Milla Crichton